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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,588	11/26/2003	Adrian B. Chernoff	GP-303033	7594

7590 02/17/2005

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EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/723,588

Applicant(s)

CHERNOFF ET AL.

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-8,10,12,14 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,9,11,13,15,16 and 21 is/are rejected.
- 7) ☒ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/09/4</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 17-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 02 December 2004. Applicant argues that the product claimed in Group I, claims 1-16 and 21, is required to be made by the same method as recited in Group II, claims 17-20. However, the product-by-process claims of Group I are limited by only by the recited structural elements and the process recited does not limit the product formed so long as the prior art appears to be the same or an obvious variant thereof. Therefore, the product claimed in Group I is not required to be made by the process of Group II.

During a telephone conversation with J. McCarthy on 11 February 2005 a provisional election was made with traverse to prosecute the invention of Species I, claims 1, 2, 4, 9, 11, 13, 15, 16, and 21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 5-8, 10, 12, and 14 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Please note, Applicant may state that the species are not patentably distinct, however Applicant is reminded that upon the rejection of one species the other species will be rejected as obvious variances of one another.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "36", "42", and "44" have been used to designate the first bend line. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because the abstract should be generally limited to a single paragraph. Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claim 9 is objected to because of the following informalities: "the back top panel portion is on a first side of the third bend and the back bottom panel portion is on a second side of the third bend" (lines 11-12) should read --the back bottom panel portion is on a first side of the third and the lower seat bottom panel is on a second side of the

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third bend such that the back bottom panel portion is adjacent to the back top panel portion—. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 13, and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 3,669,499 to Semplonius et al.

Semplonius et al. disclose a seat that appears to teach all the limitations recited in claims 1, 2, 4, 13, and 16. Semplonius et al. show a seat having a lower seat portion (Fig. 1) with matable lower seat bottom and lower seat top panel portions, a back portion (Fig. 1) with matable back bottom and back top panel portions, a seat cushion 40 (Fig. 6) on the back portion, and an integral flange 17 (Fig. 8) on the back portion connectable with respect to the other of the back portion to partially join together wherein at least one panel is unitary and the lower seat portion and the back portion are cooperatively configured to form a seat frame. Dystra et al. teaches a seat that appears to be the same as, or an obvious variant of, the seat set forth in the product-by-process claims 1 and 21 although produced by a different process.

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7. Claims 1, 2, 4, 9, 15, and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 5,913,571 to Dystra et al.

Dystra et al. disclose a vehicle seat that appears to teach all the limitations recited in claims 1, 2, 4, 9, 15, and 21. Dystra et al. show a vehicle seat having a unitary lower seat portion 28 (Fig. 7) with matable lower seat bottom and lower seat top panel portions, a back portion (Fig. 7) with matable back bottom and back top panel portions, a headrest 84 (Fig. 7) on the back portion, a first bend (Fig. 7) between the lower seat top panel portion and back top panel portion, a second bend 32 (Fig. 7) between the lower seat bottom panel and the lower seat top panel portion, and a third bend (Fig. 7) between the back bottom panel and the lower seat bottom panel wherein the lower seat portion and the back portion are cooperatively configured to form a seat frame. Dystra et al. teaches a vehicle seat that appears to be the same as, or an obvious variant of, the vehicle seat set forth in the product-by-process claims 1 and 21 although produced by a different process. See *In re Marosi*, 710 F.2d 799, 218 USPQ 289 (Fed. Cir. 1983) and *In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). Also, see MPEP § 2113.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dystra et al. as applied to claims 1, 2, 4, 9, 15, and 21 above, and further in view of U.S. Patent No. 5,988,757 to Vishey et al.

Dystra et al. disclose a vehicle seat that is basically the same as that recited in claim 11 except that the seat frame lacks a matable seat track member, as recited in the

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claim. Vishey et al. show a vehicle seat similar to that of Dystra et al. wherein the vehicle seat has a seat frame 30 (Fig. 6) and a matable seat track member (see column 6, lines 3-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the vehicle seat of Dystra et al. such that the seat frame is matable with a seat track member to be movable along the seat track member relative to a vehicle, such as the vehicle seat disclosed in Vishey et al. One would have been motivated to make such a modification in view of the suggestion in Vishey et al. that the seat track member allows for movement and proper energy dissipation in the event of a collision.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to seats with lower seat and back portions:

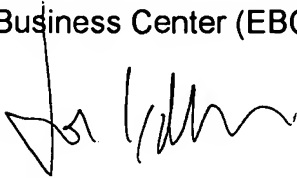
U.S. Pat. No. 2,324,318 to Niedringhaus U.S. Pat. No. 3,053,569 to Clark

U.S. Pat. No. 6,783,184 B2 to DiBattista et al. JP Pat. No. 6-15407 to Fuji

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Joe Edell', with a stylized, wavy line extending from the end.

Joe Edell
February 14, 2005